**HIGH COURT OF UTTARANCHAL AT NAINITAL.**

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 762 of 2001 (S/S)

Jitendra Singh … Petitioner

Versus

State of Uttaranchal & others … Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 12 July, 2005.

Initial of Judge.

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**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**
Writ Petition No. 762 of 2001 (S/S)

Jitendra Singh aged about 37 years
S/o Sri Ratan Singh
R/o Village Dewara
Post Office Barechina
District Almora …Petitioner

Versus

1. State of Uttaranchal through its
   Secretary
   Affairs of Home Civil Secretariat
   New Delhi
2. Director General
   Central Reserve Police Force
   C.G.O. Complex
   Lodhi Road
   New Delhi
3. Commandant 92 Battalion
   Central Reserve Police Force
   C/o Director General
   Central Reserve Police Force
   C.G.O. Complex, Lodhi Road
   New Delhi
4. Deputy Inspector General Of Police
   Central Reserve Police Force
   Allahabad
5. Inspector General of Police
   Central Sector
   Central Reserve Police Force
   Lucknow …Respondents

Sri A.K. Joshi, learned counsel for the petitioner
Sri Paresh Tripathi, learned standing counsel for the State

**Hon'ble B.C. Kandpal, J.**

By means of this writ petition a relief has been sought in the nature of certiorari quashing the impugned transfer order dated 30.01.1999 passed by the respondent No. 3 as well as the order dated 07.05.1999 passed by the respondent No. 4 and the order dated 21.10.1999 passed by the respondent No. 5 (annexed as annexure Nos. 1, 2 and 3 respectively with this writ petition).

Brief facts giving rise to this petition are that the petitioner was initially appointed on the post of constable in Central Reserve Police Force (C.R.P.F.) on 27.04.1984 and on completion of basic training, he joined his services in 92 Battalion, Central Reserve police Force, New Delhi. The petitioner was thereafter promoted to the post of Lance Nayak in the year 1994, but in the year 1998 all of a sudden a fact finding enquiry was ordered to be initiated against the petitioner by the respondent No. 3 and the petitioner was placed under suspension. In the departmental enquiry, four charges were framed against the petitioner.

One Sri Peruram Bhagat was appointed as enquiry officer. He neither allowed the petitioner to engage any advocate nor a defence assistant to defend his case and the enquiry officer without providing the reasonable opportunity to defend his case found all charges proved against the petitioner.

The enquiry officer thereafter submitted the report to the disciplinary authority i.e. respondent No. 3 and the respondent No. 3 dismissed the services of the petitioner w.e.f. 19.05.1998.

The petitioner against the aforesaid order filed an appeal before the respondent No. 4 i.e. D.I.G., Central Reserve Police Force who allowed the appeal and quashed the order of the dismissal with the observation that the order of dismissal was against the Rule and directed the petitioner to join his duty immediately.

The petitioner after obtaining the order of his reinstatement joined his services on 07.07.1998. Thereafter, the enquiry was again initiated against him on 18.09.1998 on the same charges as was framed in the previous enquiry. One Sri Dharmender Singh, Assistant Commandant, 92 Battalion was appointed as an enquiry officer and the enquiry started against the petitioner on 12.10.1998.

The petitioner moved an application before the enquiry officer as well as before the disciplinary authority to permit him to take the services of a retired Government servant as a defence assistant to defend his case, but the said request of the petitioner was stuck down by the enquiry

officer as well as by the disciplinary authority on the ground that there was no provision under Section 27 of the C.R.P.F. Rule to allow a defence assistance.

The enquiry officer after completion of the enquiry submitted the report to the disciplinary authority finding all the charges proved against the petitioner and the disciplinary authority, dismissed the services of the petitioner vide impugned order dated 30.01.1999.

The petitioner preferred an appeal before the respondent No. 4 against the above dismissal order who has also rejected the appeal of the petitioner. Thereafter, the petitioner preferred a revision which was also dismissed by the respondent No. 5, hence this writ petition.

The counter and the rejoinder affidavits have been exchanged.

The respondents in the counter affidavit have stated that the application filed by the petitioner seeking help of a retired government servant was thoroughly considered by the enquiry officer and the competent authority, but Rule 27 of the C.R.P.F. Rules do not permit such engagement of a defence retired Government servant, therefore, the request of the petitioner for engaging a defence assistant was rejected.

It has also been pleaded that the petitioner in spite of having been granted sufficient opportunity of defence, did not cooperate with the enquiry. It is pleaded that the petitioner was asked to cross-examine the witness but he refused. Hence, the principle of natural justice were followed at every stage but the petitioenr did not avail the opportunity, hence, the petitioner has now no right to challenge the dismissal order.

Heard learned counsel for the petitioenr as well as learned standing counsel for the State and perused the record.

It is pertinent to mention here that in the first enquiry when the petitioner was delinquent official before the enquiry officer, a prayer for providing defence assistance was rejected on the ground that the same was against the Rule. However, this report of the enquiry officer, dismissing the petitioner from the service was turned down by the superior authorities, but when again the enquiry was instituted again

against the petitioner, he moved an application that he should have been provided a defence assistant to defend his case. His prayer was again rejected on the ground that there is no provision under Section 27 of the C.R.P.F. Rules.

It is pertinent to mention the relevant extract from the impugned order dated 30.01.1999 on the point in issue as below:-

> *"Sh. Dharmender Singh, A/C of this unit was appointed as E.O. to conduct into the charges framed against the delinquent vide this office order No. P.VIII-12/98-92(ESTI-II) dated 30/9/98. The said L/NK had submitted application to the E.O. on commencement of D.E. for providing defence assistant in the D.L. by nominating Sh. D.N. Tiwari (Retd. O.S. CRPF) of Distt. Nainital (UP) to be appointed as defence assistant to rules and instruction on the subject prescribed in representation to the disciplinary authority for reconsideration of his request and providing defence assistant against the order passed by the E.O. since rule 27 of C.R.P.F. rules 1955 does not provide to allow any defence assistant, No. defence assistant was demanded by him in the previous D.E. wherein he pleaded guilty to the charges, no presenting officer was engaged by the department, deployment of CRPF is in various part of country in for flung area and is a highly mobils force due to disurbed law and order situation in the various part of country. Keeping in view above practical difficulties, as such under the provision of CCS (CCA) rules 14 (18) of GOI Dept. of per. & Trg. O.M. No. 11012/3/86-Est (A) dated 29//4/86, the request of L/NK Jitender Singh was rejected and it was decided that the decision of E.O. will stand vide this officer order No. P.VIII-12/98-92-(EST-II) dtd. 7/11/98."*

The counter affidavit filed by the respondents further shows that the respondents have taken the plea stating therein that Rule 27 of the C.R.P.F. rules do not permit an engagement of retired Government servant, therefore, the application of the petitioner seeking help of a

retired Government Servant as defence assistance to defend his case was rightly rejected.

It has further been pleaded in the counter affidavit that the departmental enquiry was conducted under Rules 27 (c) C.R.P.F. Rules therefore, CCS and police Rules shall have no application in the present case.

The plea taken by the respondents in their counter affidavit and the ground mentioned therein for not providing the defence assistance, to the petitioner for defending his case does not appear to be plausible and convincing. It would be relevant to quote the Section 102 of the C.R.P.F. Rules 1955, which reads as follows:-

> ***"102 Other conditions of service:*** *The conditions of service of members of the force in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Govt. of India of corresponding status."*

It is therefore, quite clear form the perusal of the aforesaid provision that there is no provision regarding the enquiry, therefore the Central Civil Services (classification, control and appeal) rules is applicable towards the enquiry.

Further, perusal of Rule 14(8) CCS (CCA) Rules 1965 reveals that a Government Servant can take an assistance of any other Government servant to present his case. This rule reads as follows:-

> *"Rule 14 (8) a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having to the circumstances of the case, so permits;*

*Provided that the Government servant may take the assistance or any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.*

*b) The Government servant may also take the assistance of a retired Government Servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."*

Apart from the aforesaid provisions, the petitioner has also filed annexure 4 to this writ petition, which is a confidential letter issued from the officer of D.I.G.Police, C.R.P.F. Ajmer to the Additional D.I.G.Police, reveals that although it was a subject matter pertaining to different enquiry but in that enquiry it was observed by the respondents authorities that the accused has a right to take the assistance of another Government servant of the Union of India as envisaged under Rule 2 (h) of the CCS (CCA) Rules 1965.

Bare reading of the aforesaid provisions as has been quoted by me in the above paragraph, it becomes quite clear that the petitioenr had right to take the assistance of another Government servant for defending his case and the petitioenr was also not required to take prior permission of the disciplinary authority in this regard. The petitioenr only needs to send intimation to this effect to the disciplinary authority.

In the instant case, I am of the view that the enquiry officer by refusing the defence assistance to defend the case of the petitioenr has committed a manifest error, which is against the provision of law. The order of dismissal against the petitioner without providing the reasonable opportunity of being heard is illegal and arbitrary.

The Hon'ble Supreme Court, in a case reported in ***(1972) 3 Supreme Court case 542 C.L. Subramaniam Vs. Collector of Customs, Cochin*** has held that "*the enquiry officer did not afford the appellant necessary facility to have the assistance of another Government Servant*

*in defending him which assistance he was entitled to under Rule. He was deprived of that assistance solely because of the indifference attitude adopted by the enquiry officer. Therefore, enquiry officer had clearly breached the CSS (CCA) Rules."*

As the petitioner has been awarded a major punishment of dismissal from services, therefore, the petitioner could have been afforded defending him. Hence the petitioner had not been afforded a reasonable opportunity to defend himself, the impugned order is liable to be stuck down.

For the reasons stated above, I am of the view that the order of dismissal passed against the petitioner suffers with arbitrariness, hence is liable to be set aside.

All the orders annexed as annexure Nos. 1, 2 and 3 along with the petition are deserved to be quashed.

I think, it would be proper to remand the matter back before the respondents for conducting fresh enquiry against the petitioner. The petitioner should be restored to the position to which he would have bee entitled to but for the impugned order.

However, it is open for the respondents to conduct the departmental enquiry against the petitioner and after providing him a reasonable opportunity of being heard to pass the appropriate order in accordance with law.

With the result, the writ petition is allowed.

The impugned orders dated 30.01.1999, 07.05.1999 and 21.10.1999 are hereby quashed. The matter is remanded back for fresh enquiry to be conducted against the petitioner in accordance with law. The petitioner shall be restored to be position to which he would have been entitled to but for the impugned order.

**(B.C. Kandpal, J.)**

12.07.2005
ASWAL